

### PATENT COOPERATION TREATY

### **PCT**

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference JE/P7166/PCT	FOR FURTHER ACTION	See Form PCT/IPEA/416			
International application No. PCT/GB2004/005243	International filing date (day/month/year) 15.12.2004	Priority date (day/month/year) 06.01.2004			
International Patent Classification (IPC) or national classification and IPC C01B33/02					
Applicant PSIMEDICA LIMITED et al.					
This report is the international pre Authority under Article 35 and trar	liminary examination report, establish is mitted to the applicant according to	ed by this International Preliminary Examining Article 36.			
This REPORT consists of a total of 4 sheets, including this cover sheet.					
3. This report is also accompanied b	This report is also accompanied by ANNEXES, comprising:				
a.   sent to the applicant and to the International Bureau) a total of sheets, as follows:					
	ng rectifications authorized by this Au	e been amended and are the basis of this report thority (see Rule 70.16 and Section 607 of the			
		ority considers contain an amendment that goes d, as indicated in item 4 of Box No. I and the			
sequence listing and/or tab	dureau only) a total of (indicate type ar oles related thereto, in computer read Listing (see Section 802 of the Admir	nd number of electronic carrier(s)) , containing a able form only, as indicated in the Supplemental nistrative Instructions).			
4. This report contains indications re	lating to the following items:				
Box No. I Basis of the opi	nion				
☐ Box No. II Priority					
☐ Box No. III Non-establishm	ent of opinion with regard to novelty,	inventive step and industrial applicability			
Box No. IV Lack of unity of	invention				
	ment under Article 35(2) with regard lations and explanations supporting su				
☐ Box No. VI Certain docume	ents cited				
☐ Box No. VII Certain defects	in the international application				
☐ Box No. VIII Certain observa	tions on the international application	•			
Date of submission of the demand	Date of compl	letion of this report			
24.08.2005	22.03.2006	22.03.2006			
Name and mailing address of the international preliminary examining authority:  Authorized Officer					
European Palent Office D-80298 Munich Besana, S					
Tel. +49 89 2399 - 0 Tx: 5236 Fax: +49 89 2399 - 4465	556 epmu d	o. +49 89 2399-			



# INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No. PCT/GB2004/005243

	Вох	No. I	Basis of the report
1.	With regard to the <b>language</b> , this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.		
		This re which i	port is based on translations from the original language into the following language, sthe language of a translation furnished for the purposes of:
		☐ pub	rnational search (under Rules 12.3 and 23.1(b)) lication of the international application (under Rule 12.4) mational preliminary examination (under Rules 55.2 and/or 55.3)
2.	With regard to the elements* of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):		
	Des	cription	. Pages
	1-21	-	as originally filed
	Claí	ms, Nur	nbers .
	1-8		as originally filed
Dra		wings, S	Sheets
	1/1		as originally filed
		a sequ	ence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. 🗆		The an	nendments have resulted in the cancellation of:
			description, pages
			claims, Nos. drawings, sheets/ligs
		☐ the	sequence listing (specify):
		⊔ any	table(s) related to sequence listing (specify):
4.	□ had Sup	not bee	port has been established as if (some of) the amendments annexed to this report and listed below en made, since they have been considered to go beyond the disclosure as filed, as indicated in the tal Box (Rule 70.2(c)).
			description, pages
			claims, Nos. drawings, sheets/figs
		☐ the	sequence listing (specify):
		⊔ any	table(s) related to sequence listing (specify):
	*	7£ 34	em 4 applies some or all of these sheets may be marked "supercoded"



## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No. PCT/GB2004/005243

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N) Yes: Claims 1-6

No: Claims 7,8

Inventive step (IS) Yes: Claims 1-6

No: Claims 7,8

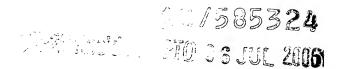
Industrial applicability (IA) Yes: Claims 1-8

No: Claims

2. Citations and explanations (Rule 70.7):

see separate sheet





# REPORT ON PATENTABILITY (SEPARATE SHEET)

International application No.

PCT/GB2004/005243

#### Re Item V.

1. Reference is made to the following documents:

D1: WO 98/27246 A (IMPLANT SCIENCES CORP) 25 June 1998 (1998-06-25)

D1: WO 02/067998 A (PSIMEDICA LIMITED; CANHAM, LEIGH, TREVOR; ASTON, ROGER) 6 September 2002 (2002-09-06)

2. Documents D1 (cf. p.3 l.14-p.4. l.7; p.6 l.15-16; p.11 l.7-13) and D2 (cf. p.3 l.1-20; p.4 l.8-19; p.22 l.1-p.24 l.11) disclose a radiotherapeutic product comprising silicon and phosphorous, also present as isotope <sup>32</sup>P. D2 specifically describes the use of the SiP powder in the treatment of cancer.

Independent claim 7 is drafted in terms of a "product-by-process" claim. In view of the provisions of Art, 64(2) EPC the EPO considers "product-by-process" claims to extend to the product per se.

Hence, the products described in the documents D1 and D2 fall within the gneral definition given in claim 7 of the present application.

Taking into account the fact that a product is not necessarily new if it is made by a novel process and the interpretation of "product-by-process" claims used by the EPO, the subject-matter of claims 7 and 8 is considered to lack novelty in respect to documents D1 and D2, when considered separately (Article 33(2) PCT).

- None of the documents cited in the search report disclose or suggest the subjectmatter of independent claim 1.
   Hence, the subject-matter of claim 1 is considered novel and inventive (Art.33(2))
  - and (3) PCT).
- 4. Claims 2-6 are dependent on claim 1 and as such also meet the requirements of the PCT with respect to novelty and inventive step.